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JENNY WOLFES

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JENNY WOLFES,

Plaintiff,

vs.

BURLINGTON INSURANCE COMPANY
AND DOES 1 to 25, Inclusive,

Defendants.

CASE NOS. C07 00696 RMW
C07 04657 RMW

**DECLARATION OF GERALD A.
EMANUEL IN SUPPORT OF MOTION
TO CONSOLIDATE CASES**

JENNY WOLFES,

Plaintiff,

vs.

BURLINGTON INSURANCE COMPANY
AND DOES 1 to 25, Inclusive,

Defendants.

I, Patrick C. Stokes, declare as follows:

- I, Gerald A. Emanuel, am an attorney with the law firm of Hinkle, Jachimowicz, Pointer & Emanuel, counsel for Plaintiff, Jenny Wolfes ("Wolfes"), in the above-captioned

1 actions.

2 2. I am over the age of 18 years, and I have personal knowledge of the facts set forth below
3 and, if called upon to testify on such matters, I would and could do so competently.

4 3. The common questions of fact presented by each of the above-captioned actions involve:

5 a. the circumstances surrounding the underlying state court action *Big Sky*
6 *Entertainment III, Inc. et al. v. Jenny Wolfes* (the Underlying Action”);

7 b. the circumstances surrounding Burlington’s refusal to defend Wolfes in the
8 Underlying Action.

9 4. The common legal question presented by each of the above-captioned actions involves
10 whether Burlington had a duty to defend Wolfes in the Underlying Action under the
11 terms of The Burlington Insurance Company (“Burlington”) Commercial General
12 Liability Policy Number 585BW03318 (“the Policy”).

13 5. Consolidation of the above-captioned actions will expedite the resolution of both actions
14 because:

- 15 a. it will eliminate duplicate written and deposition discovery in the two actions;
16 b. it will eliminate duplicate pretrial preparation and presentation of evidence; and
17 c. it will avoid the possibility of inconsistent results from two actions.

18 6. There is no possibility that the jury will be confused by consolidation of the above-
19 captioned actions in a single action.

20 7. Consolidation will not unduly delay the trial of either of the above-captioned actions
21 because:

- 22 a. they are currently in similar stages of trial readiness and at comparable stages in
23 the pretrial process;
24 b. the only appreciable difference between these actions, with regard to trial
25 readiness, is that written discovery has been completed in the lower-numbered
26 action; and
27 c. consolidation of these action will not necessitate re-opening of written discovery
28 in the lower-numbered action.

1 8. On August 17, 2004, Big Sky Entertainment III, Inc. ("Big Sky III"), James Edward
2 Pope ("Pope"), William Leunis III ("Leunis"), and Robert Simpson ("Simpson") filed
3 the Underlying Action.

4 9. The complaint in the Underlying Action ("the Underlying Complaint") alleged various
5 acts on the part of Wolfes that constituted, in the minds of the plaintiffs, Conversion,
6 Breach of Fiduciary Duty, and Interference With Prospective Economic Advantage.

7 10. On October 20, 2005, Ms. Wolfes' tendered the defense of the Underlying Action to
8 Burlington.

9 11. On November 1, 2005, only eight business days later, Burlington disclaimed coverage
10 and refused to provide a defense.

11 12. On December 6, 2006, Wolfes filed the lower-numbered action in the Superior Court of
12 California, County of Santa Clara, seeking a judicial determination of the obligation of
13 Burlington to defend her with regard to the Underlying Action.

14 13. Burlington removed the lower-numbered action to the Northern District of California on
15 February 2, 2007.

16 14. On September 10, 2007, Wolfes filed the higher-numbered action in the Northern
17 District of California.

18 15. The higher-numbered action asserts claims for Breach of Contract, Breach of the
19 Covenant of Good Faith and Fair Dealing, Intentional Infliction of Emotional Distress,
20 and Negligent Infliction of Emotional Distress against Burlington.

21 16. The complaint in the higher-numbered action alleges that its causes of action stem from:
22 1) Burlington's continuing unjustifiable refusal to defend Wolfes; and 2) Burlington's
23 collusion with the plaintiffs in the Underlying Action.

24 I declare, under the penalty of perjury under the laws of the State of California and the laws of
25 the United States, that the foregoing is true and correct. Executed this 6th day of February,
26 2008, at San Jose, California.

27 _____/s Gerald A. Emanuel

28 Gerald A. Emanuel